



United States General Accounting Office
Washington, D.C. 20548

General Government Division

B-282515

June 18, 1999

The Honorable Herbert Kohl
The Honorable Jeff Sessions
United States Senate

Subject: Bankruptcy Reform: Use of the Homestead Exemption by Chapter 7 Bankruptcy Debtors in the Northern District of Texas and the Southern District of Florida in 1998

On February 2, 1999, you requested that we obtain information on the use of the homestead exemption by bankruptcy debtors in Texas and Florida—two states that permit a bankruptcy debtor to claim a homestead exemption of an unlimited dollar amount. Under the bankruptcy code, a debtor who files for bankruptcy may retain certain exempt assets, including equity in the debtor's homestead (usually the debtor's principal residence). The dollar amount of the homestead exemption that may be claimed varies by state. Five states, including Texas and Florida, allow an eligible homestead exemption of an unlimited dollar amount.¹

Specifically, as agreed with your offices, we reviewed statistically valid probability samples of chapter 7 bankruptcy cases that were closed in 1998 in the Northern District of Texas and the Southern District of Florida. As requested, we used the data from these samples to estimate for each district the (1) proportion of chapter 7 personal bankruptcy debtors who claimed a homestead exemption, (2) average and median amount of the homestead exemptions claimed, (3) average and median amount of total scheduled debts² for those debtors who claimed a homestead exemption, and (4) estimated average and median amount of debts discharged by debtors who claimed a homestead exemption. Further, as also requested, we divided our analyses of bankruptcy debtors into two groups—those who claimed a homestead exemption of less than \$100,000, and those who claimed a homestead exemption of \$100,000 or more. This letter summarizes our results and discusses the scope and methodology we used to gather the data.

¹ The remaining three states are Iowa, Kansas, and South Dakota.

² Debtors are to list (or schedule) all their debts on the financial schedules that they file with their bankruptcy petition.

Summary of Data

Based on our review of statistically valid probability samples of personal chapter 7 bankruptcy cases closed in calendar year 1998 in the Northern District of Texas the Southern District of Florida, we can estimate³ the following:

- About 52 percent of the chapter 7 cases closed in 1998 in the Northern District of Texas—or 6,999 cases—involved a homestead exemption claim.
- About 46 percent of the chapter 7 cases closed in 1998 in the Southern District of Florida—or 9,532 cases—involved a homestead exemption claim.
- Of the estimated 6,999 cases in Texas that involved a homestead exemption, 83 (1.2 percent) involved homestead exemptions of \$100,000 or more; and the remaining 6,916 involved homestead exemptions of less than \$100,000.
- Of the estimated 9,532 cases in Florida that involved a homestead exemption, 73 (0.8 percent) involved homestead exemptions of \$100,000 or more; and the remaining 9,459 involved homestead exemptions of less than \$100,000.

Table 1 shows the projected average and median value of (1) the homestead exemption claimed; (2) total scheduled debt; and (3) estimated total debt discharged, for the estimated population of 6,916 Texas cases and 9,459 Florida cases in which the homestead exemption claimed was less than \$100,000. The dollar value of the homestead exemption claimed is the debtor's equity in the homestead—the difference between the homestead property's market value and the amount of outstanding debt on the property at the time the debtor filed for bankruptcy.

Table 1: Projected Homestead Exemptions Claimed, Total Scheduled Debts, and Estimated Total Debts Discharged for the Projected Population of Cases Involving Homestead Exemptions of Less Than \$100,000 in 1998 in Two Bankruptcy Districts

District	Claimed homestead exemption		Total scheduled debts ^a		Estimated total debts discharged ^b	
	Average	Median	Average	Median	Average	Median
Texas-Northern (6,916 cases)	\$14,820	\$8,874	\$119,700	\$95,771	\$44,696	\$34,851
Florida-Southern (9,459 cases)	\$16,041	\$9,884	\$181,827	\$117,254	\$58,898	\$34,570

Note: Confidence intervals for these dollar estimates are included in enclosure I.

^aIn some of the cases reviewed, debtors listed on their debt schedules a creditor, such as the Internal Revenue Service, but did not list an amount owed or listed the amount owed as "unknown." In such cases, the debtors' schedules we reviewed probably understated the amount of debt owed (see enc. II).

^bThe amount of debts discharged is not shown in the case files. We estimated discharged debts using certain assumptions, as discussed in enclosure II.

Source: GAO analysis of a statistically valid probability sample of chapter 7 cases closed in 1998 in the Northern District of Texas and the Southern District of Florida.

³ Confidence intervals for these population estimates are included in enclosure I.

Because of the relatively small number of cases involving homestead exemption claims of \$100,000 or more, we could not project to the population for each of the districts with adequate statistical confidence. Tables 2 and 3, therefore, show the homestead exemptions claimed, as well as the average and median homestead exemption claimed, total scheduled debts, and estimated total debts discharged, for the seven Texas sample cases and the four Florida sample cases in which the homestead exemption claimed was \$100,000 or more.

Table 2: Data on Homestead Exemption Claims of \$100,000 or More From Our Sample of Chapter 7 Cases Closed in 1998 in the Northern District of Texas

Homestead exemption claimed	Total scheduled debt ^a	Estimated total discharged debt ^b
\$103,940	\$111,031	\$60,666
110,000	205,739	170,382
116,000	7,520,259 ^c	35,000
146,000	1,491,572	1,240,772
150,000	370,500	299,564
161,000	462,000	387,000
260,000	201,978	173,816
Average \$149,563	\$1,480,440	\$338,171
Median \$146,000	\$370,500	\$173,816

^aIn some of the cases reviewed, debtors listed on their debt schedules a creditor, such as the Internal Revenue Service, but did not list an amount owed or listed the amount owed as "unknown." In such cases, the debtors' schedules we reviewed probably understated the amount of debt owed (see enclosure II).

^bThe amount of debts discharged is not shown in the case files. We estimated discharged debts using certain assumptions, as discussed in enclosure II.

^cThis scheduled debt included a court judgment in the amount of \$7,366,259. If total discharged debt included this amount, total discharged debt would be \$7,401,259. However, data were not available in the file to determine if this debt was dischargeable.

Source: GAO analysis of a statistically valid probability sample of chapter 7 cases closed in 1998 in the Northern District of Texas.

Table 3
Data on Homestead Exemption Claims of \$100,000 or More From Our Sample of Chapter 7 Cases Closed in 1998 in the Southern District of Florida

Homestead exemption claimed	Total scheduled debt ^a	Estimated total discharged debt ^b
\$113,834	\$247,101	\$243,935
119,335	227,575	106,910
121,500	97,096	25,025
122,000	54,701	41,701
Average \$119,167	\$156,618	\$104,393
Median \$120,418	\$162,336	\$74,306

^aIn some of the cases reviewed, debtors listed on their debt schedules a creditor, such as the Internal Revenue Service, but did not list an amount owed or listed the amount owed as "unknown." In such cases, the debtors' schedules we reviewed probably understated the amount of debt owed (see enclosure II).

^bThe amount of debts discharged is not shown in the case files. We estimated discharged debts using certain assumptions, as discussed in enclosure II.

Source: GAO analysis of a statistically valid probability sample of chapter 7 cases closed in 1998 in the Southern District of Florida.

Enclosure I provides further details—broken out by cases with homestead exemption claims of less than \$100,000 and those of \$100,000 or more—on the results of our case reviews, including estimates and confidence intervals for average and median values for homestead exemption claims, total scheduled debts, and estimated total discharged debt. The results of our analysis are limited to chapter 7 cases closed in these two districts in calendar year 1998.

Scope and Methodology

To obtain data on homestead exemption values, total scheduled debts, and discharged debts for debtors who claimed a homestead exemption, we reviewed bankruptcy court case files on closed chapter 7 bankruptcy cases that had not been dismissed. We excluded dismissed cases from our sample because debtors whose chapter 7 cases are dismissed do not receive a discharge of their eligible dischargeable debts. We chose closed chapter 7 cases for two reasons. First, proposed bankruptcy reform legislation has focused principally on debtors who file under chapter 7 of the bankruptcy code seeking a discharge of their eligible dischargeable debts.⁴ (Some debts, such as child support and certain back taxes, are not dischargeable in bankruptcy.) Second, only closed cases could be used to identify debtors who received a discharge of their eligible dischargeable debts.

The clerk of court in each of the two districts provided us with a list of all chapter 7 cases closed in each district in calendar year 1998 that were not dismissed. These lists included 13,477 cases in the Northern District of Texas and 20,897 cases in the Southern District of Florida. Because no empirical data existed on the percentage of debtors who claim homestead exemptions, we spoke with several court officials to discuss this issue. Although their estimates varied, the officials agreed that it was likely that a minority of chapter 7 debtors in each district had claimed a homestead exemption. On the basis of these discussions, we used the assumption that 30 percent of the chapter 7 cases closed in each district would involve a homestead exemption in developing a representative sample of cases to review in each district.⁵ The resulting sample included 823 cases in the northern District of Texas and 785 cases in the Southern District of Florida.⁶

Our sample was designed to permit us to include confidence intervals for all results reported and to provide separate estimates for cases filed and closed under chapter 7 and cases converted to chapter 7 from another bankruptcy chapter prior to closing. Because the confidence intervals for the different estimates vary in size, we report all of them in enclosure I rather than in this letter. To ensure consistency across all files we reviewed, we designed a data collection instrument to capture information from the case files on (1) whether the debtor(s) claimed a homestead exemption; (2) the dollar amount of the homestead property claimed as exempt, if any; (3) the total dollar amount of scheduled secured, unsecured priority, and unsecured nonpriority debts; (4) the dollar amount of any debt the debtor reaffirmed (agreed to repay); and (5) the dollar amount of any assets the debtor surrendered to creditors. Further, we used data in the case files to derive the dollar amount of the debtors' nondischargeable debts, if any, and the total debts discharged.

⁴ Under chapters 11, 12, and 13, personal bankruptcy filers generally seek to develop a plan for repaying all or a portion of their debts over a period of time. Under certain conditions, debtors who file under chapters 11, 12, or 13, may have their cases converted to chapter 7 and seek a discharge of their eligible debts.

⁵ Because the percentage of cases involving homestead exemption claims was about 22 percent higher than anticipated—52 percent rather than 30 percent—we were able to project the results of our sample to all chapter 7 cases closed in 1998 in each district with a greater degree of statistical confidence. Further details on our sampling can be found in enclosure II.

⁶ As discussed in enclosure II, our final analysis excluded 26 cases from our Texas sample and 11 cases from our Florida sample.

Although we endeavored to use the most accurate data available in each file, we did not independently verify the data recorded on the debtors' schedules. Consequently, the results of our analyses on the amount of homestead exemptions claimed, total scheduled debts, and discharged debts must be considered estimates rather than precise amounts. We performed our work from February through May 1999 in accordance with generally accepted government auditing standards. Our objectives, scope, and methodology are described in more detail in enclosure II.

On June 10, 1998, we provided a draft of this letter to the Administrative Office of the U.S. Courts for comment. On June 14, 1999, the Administrative Office provided technical comments that principally addressed the bankruptcy courts' responsibilities for data collection and reporting, which we have incorporated into this letter as appropriate.

We plan no further distribution of this letter for 30 days, unless its contents are made public. At that time, we will send copies to Senators Charles Grassley and Robert Torricelli, the Chairman and Ranking Minority Member of the Subcommittee on Administrative Oversight and the Courts, Senate Committee on the Judiciary; Representatives George Gekas and Jerrold Nadler, the Chairman and Ranking Minority Member of the Subcommittee on Commercial and Administrative Law, House Committee on the Judiciary; Mr. Ralph Meacham, Director of the Administrative Office of the U.S. Courts; the Honorable Robert C. McGuire, Chief Bankruptcy Judge in the Northern District of Texas; and the Honorable A. Jay Cristol, Chief Bankruptcy Judge in the Southern District of Florida. We will send copies of this letter to others upon request.

If you have questions regarding this letter, please contact me or William Jenkins at (202) 512-8777. Key contributors to this assignment were Christopher Conrad, Fredrick Berry, and Wendy Ahmed.

A handwritten signature in black ink that reads "Richard M. Stana". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Richard M. Stana
Associate Director
Administration of Justice Issues

Data on Chapter 7 Bankruptcy Debtors' Use of the Homestead Exemption in the Districts of Northern Texas and Southern Florida

This enclosure contains data on the use of the homestead exemption in personal (nonbusiness) chapter 7 bankruptcy cases closed in 1998 in the Northern District of Texas and in the Southern District of Florida. It includes data from our sample of cases in each district and our weighted statistical projections to the population of all chapter 7 cases closed in each district in 1998. The confidence intervals shown are the boundaries within which there is a 95-percent statistical probability that the actual amount for the population of cases would be found.

Table I.1: Results of Analyses of Homestead Exemptions Claimed in 1998 in Two Bankruptcy Districts

	Northern District of Texas			Southern District of Florida		
	Population projections			Population projections		
	Sample results	Estimate	Confidence interval	Sample results	Estimate	Confidence interval
Homestead exemption claims						
Total number of cases with homestead exemption claims	414 (52%)	6,999 (52%)	+/- 4% (48% to 56%)	401 (52%)	9,532 (46%)	+/- 4% (42% to 50%)
Number with claims under \$100,000	407 (99%)	6,916 (99%)	+/- 1% (98% to 100%)	397 (99%)	9,459 (99%)	+/- 1% (98% to 100%)
Number with claims of \$100,000 or more	7 (1%)	83 (1%)	+/- 1% (0% to 2%)	4 (1%)	73 (1%)	+/- 1% (0% to 2%)
Homestead claims under \$100,000						
Average amount of claims under \$100,000	\$13,400	\$14,820	\$12,443 to \$17,197	\$12,974	\$16,041	\$13,461 to \$18,621
Median amount of claims under \$100,000	\$8,000	\$8,874	\$7,026 to \$10,945	\$7,872	\$9,884	\$6,870 to \$13,241
Homestead claims of \$100,000 or more						
Average amount of claims of \$100,000 or more	\$149,563	a	a	\$119,167	a	a
Median amount of claims of \$100,000 or more	\$146,000	a	a	\$120,418	a	a

^aSample sizes were too small to assess the precision of projections to all chapter 7 cases closed in the district.

Source: GAO analysis of a statistically valid probability sample of chapter 7 bankruptcy cases closed in 1998 in the Northern District of Texas and the Southern District of Florida.

Enclosure I
Data on Chapter 7 Bankruptcy Debtors' Use of the Homestead Exemption in the Districts of Northern Texas and Southern Florida

Table I.2: Total Scheduled Debts for Cases Involving Homestead Exemption Claims

	Northern District of Texas			Southern District of Florida		
	Sample results	Population projections	Confidence interval	Sample results	Population projections	Confidence interval
		Estimate			Estimate	
Total scheduled debts						
Average amount for all cases in sample	\$144,599	\$130,091	\$112,719 to \$147,463	\$180,359	\$181,737	\$115,812 to \$247,662
Median amount for all cases in sample	\$97,624	\$96,457	\$91,205 to \$103,817	\$119,285	\$117,254	\$109,640 to \$125,782
Cases with homestead claims under \$100,000						
Average amount	\$121,624	\$119,699	\$106,555 to \$132,843	\$180,598	\$181,827	\$115,396 to \$248,258
Median amount	\$96,544	\$95,771	\$89,829 to \$103,869	\$119,285	\$117,254	\$109,762 to \$125,710
Cases with homestead claims of \$100,000 or more						
Average amount	\$1,480,440	\$995,864	\$190,537 to \$1,801,191	\$156,618	\$170,151	\$73,865 to \$266,437
Median amount	\$370,500	\$398,292	^a	\$162,336	^a	^a

^aSample sizes were too small to assess the precision of projections to all chapter 7 cases closed in the district.

Source: GAO analysis of a statistically valid probability sample of chapter 7 bankruptcy cases closed in 1998 in the Northern District of Texas and the Southern District of Florida.

Enclosure I
Data on Chapter 7 Bankruptcy Debtors' Use of the Homestead Exemption in the Districts of Northern Texas and Southern Florida

Table I.3: Total Estimated Discharged Debts for Cases Involving Homestead Exemption Claims

	Northern District of Texas			Southern District of Florida		
	Sample results	Population projections		Sample results	Population projections	
		Estimate	Confidence interval		Estimate	Confidence interval
Total estimated discharged debts						
Average amount for all cases in sample	\$47,421	\$50,150	\$41,838 to \$58,462	\$54,411	\$59,451	\$45,712 to \$73,190
Median amount for all cases in sample	\$32,979	\$35,165	\$32,585 to \$39,378	\$30,414	\$34,609	\$30,401 to 39,002
Cases with homestead claims under \$100,000						
Average amount	\$42,420	\$44,696	\$41,041 to \$48,351	\$53,908	\$58,898	\$45,116 to \$72,680
Median amount	\$32,415	\$34,851	\$32,119 to \$39,012	\$30,012	\$34,570	\$30,410 to \$38,947
Cases with homestead claims of \$100,000 or more						
Average amount	\$338,171	\$504,574	\$85,593 to \$546,465	\$104,393	\$130,694	^a
Median amount	\$173,816	\$308,961	^a	\$74,306	^a	^a

^aSample sizes were too small to assess the precision of projections to all chapter 7 cases closed in the district.

Source: GAO analysis of a statistically valid probability sample of chapter 7 bankruptcy cases closed in 1998 in the Northern District of Texas and the Southern District of Florida.

Objectives, Scope, and Methodology

Overall, our objective was to review the use of the homestead exemption by debtors whose personal (nonbusiness) chapter 7 bankruptcy cases were closed in calendar year 1998 in two bankruptcy districts—the Northern District of Texas and the Southern District of Florida. Both of these districts are located in states that permit debtors to claim a homestead exemption of an unlimited dollar amount. Specifically, our objectives were to determine for each district (1) how many chapter 7 bankruptcy debtors claimed a homestead exemption, (2) the average and median amount of the exemption claimed, (3) the average and median amount of total debts that debtors who claimed a homestead exemption listed on the schedules of debts filed with their bankruptcy petition, and (4) the estimated average and median amount of the debts discharged by bankruptcy filers who claimed a homestead exemption. As requested, we divided those debtors who claimed a homestead exemption into two groups—debtors who claimed a homestead exemption of (1) less than \$100,000 and (2) at least \$100,000 but not more than \$500,000. In our sample, we found no debtors who claimed a homestead exemption of as much as \$300,000. We estimated the average and median amount of debts discharged by the debtors in each of these two groups.

To meet these objectives, we reviewed the statutory provisions defining property eligible for a homestead exemption in Texas and Florida and related U.S. bankruptcy code provisions regarding dischargeable and nondischargeable debts.¹ We interviewed bankruptcy court officials in both districts; a private panel trustee, whose responsibilities include reviewing debtors' financial schedules; and an official within the Executive Office of U.S. Trustees. We also discussed our proposed case file review methodology with a bankruptcy judge and incorporated his suggested changes into our methodology. To obtain the data needed to meet our objectives, we reviewed a statistically valid probability sample of closed chapter 7 cases in each district. The results of our analysis are limited to personal chapter 7 bankruptcy cases closed in 1998 in the Northern District of Texas and the Southern District of Florida.

Sample Selection

At our request, the clerk of court in each of the two districts—the Northern District of Texas and the Southern District of Florida—provided us with a list of all personal (nonbusiness) chapter 7 cases closed in each district in calendar year 1998 that were not dismissed. These lists included 13,477 cases in the Northern District of Texas and 20,897 cases in the

¹ A "dischargeable" debt is essentially a debt for which the bankruptcy code allows the debtor's personal liability to be eliminated. By statute, some categories of debts expressly cannot be discharged in bankruptcy. These debts are referred to as "nondischargeable."

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Southern District of Florida. From this population of cases, we selected a statistically valid probability sample of 823 cases in the Northern District of Texas and 785 cases in the Southern District of Florida to review. We excluded dismissed cases from our samples because debtors whose cases are dismissed generally remain financially responsible for their debts and do not receive a discharge of their eligible dischargeable debts from the bankruptcy court.

We chose closed chapter 7 cases for two reasons. First, proposed personal bankruptcy reform legislation has focused principally on debtors who file under chapter 7 of the bankruptcy code seeking to have their eligible dischargeable debts discharged in bankruptcy. Generally, the debtor no longer has any personal financial liability for debts discharged in bankruptcy. Creditors are prohibited from attempting to collect debts discharged in bankruptcy. Second, the debts actually discharged in bankruptcy can generally be determined only from closed bankruptcy court cases.² We excluded from our samples closed cases that were dismissed because debtors whose cases are dismissed do not generally receive a discharge of their eligible debts and, thus, generally remain financially responsible for all their debts.³ In both districts, our samples included chapter 7 cases closed in calendar year 1998, whether initially filed and closed under chapter 7 of the bankruptcy code or filed under another bankruptcy chapter, but subsequently converted to and closed under chapter 7.⁴ In general, debtors whose cases were converted to chapter 7 prior to closing may claim a homestead exemption.

Our final samples for the two districts are shown in table II.1. The table shows the population of cases from which we selected our sample in each district, the number of cases in our sample in each district, and the final number of cases in each district included in our analyses. Our sample sizes

² In some circumstances, a state court may have concurrent jurisdiction with the bankruptcy court for certain complaints about the dischargeability of particular debts.

³ A chapter 7 bankruptcy debtor's case may be dismissed for various reasons, including "for cause," which can encompass such reasons as the debtor's failure to pay the bankruptcy court filing fee, complete the required financial schedules, attend the required meeting with creditors and the private panel trustee, or where granting relief would be a "substantial abuse" of such bankruptcy provisions.

⁴ In these two districts in calendar year 1998, the great majority of cases converted to chapter 7 from another bankruptcy chapter prior to closing were initially filed under chapter 13. In the Northern District of Texas, 866 of 977 (88.6 percent) cases converted to chapter 7 prior to closing were converted from chapter 13. In the Southern District of Florida, 408 of 416 (98.1 percent) converted cases were converted from chapter 13. Under chapter 13, debtors agree to enter into and perform under a repayment plan, which must be approved by the bankruptcy court, in which the debtors agree to repay all or a portion of their debts over a period not to exceed 3 to 5 years. These chapter 13 repayment plans may not be completed for a variety of reasons. Determining the reasons that cases were converted to chapter 7 from another chapter prior to closing was beyond the scope of our review.

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were based on several assumptions about the percentage of debtors who claimed a homestead exemption, the distribution of the amounts of homestead exemptions claimed, and the distribution of the amounts of total debt discharged for debtors who claimed a homestead exemption.

Table II.1: Population of Calendar Year 1998 Closed Chapter 7 Cases Used for Sample Selection and the Composition of the Final Sample in Each District

Closed chapter 7 cases	Northern District of Texas	Southern District of Florida
Nondismissed cases closed in calendar year 1998		
Filed and closed under chapter 7	12,500	20,481
Closed under chapter 7 after conversion from another chapter	977	416
Total	13,477	20,897
Size of random sample		
Filed and closed under chapter 7	580	603
Closed under chapter 7 after conversion from another chapter	243	182
Total	823	785
Less cases in sample deleted from final analysis^a		
Filed and closed under chapter 7	14	5
Closed under chapter 7 after conversion from another chapter	12	6
Net total number of cases analyzed	797	774

Note: Sample was based on the assumption that 30 percent of closed chapter 7 cases would include a homestead exemption claim. However, about 52 percent of the cases in each district's sample included a homestead exemption. This higher than expected percentage permitted us to project the results of our sample to all cases closed in each district with greater statistical confidence.

^aWe deleted cases in which the case file contained insufficient data for analysis or in which there were conflicting data about the amount of the homestead exemption, debts, or debts discharged that could not be reconciled using other documents in the file.

Source: Clerks of the Bankruptcy Courts for the Northern District of Texas and the Southern District of Florida, and GAO data.

There were virtually no empirical data on the percentage of debtors who claimed a homestead exemption in each district in calendar year 1998. Consequently, we discussed this issue with an official in the Executive Office for U.S. Trustees, court officials in each district, and a private panel trustee. Although their estimates varied, each of these officials agreed that it was likely that a minority of chapter 7 debtors in each district had claimed a homestead exemption. On the basis of these discussions, our

sample size in each district was based on the assumption that 30 percent of the chapter 7 cases closed in each district would involve a homestead exemption. We also made some assumptions about the distribution of the amounts of the homestead exemptions claimed. For example, on the basis of our discussions, we stratified our samples in each district. We did this because those we interviewed thought that cases converted to chapter 7 from other bankruptcy chapters prior to closing were likely to have a higher proportion of debtors who claimed a homestead exemption than debtors whose cases were filed and closed under chapter 7. On the basis of these assumptions, we selected a statistically valid probability sample of 823 cases in the Northern District of Texas and 785 cases in the Southern District of Florida. The sample cases within each strata were then weighted in the analysis to account statistically for all chapter 7 cases closed in 1998. Though converted cases are overrepresented in the sample, weights used in the analysis correctly reflect their frequency in the population. Our samples were designed to permit us to include confidence intervals for all results reported and to provide separate estimates for cases filed and closed under chapter 7 and cases converted to chapter 7 from another bankruptcy chapter prior to closing.

During our review of the case files in each district, we deleted some cases from our final analysis because the case files had either insufficient information for our analysis or conflicting information that could not be reconciled using other documents in the file. For example, if the amount of the mortgage debt could not be determined from a reaffirmation agreement, proof of claim, court order, or the financial schedules, we excluded the case from our analysis. We deleted 26 cases (3.2 percent of our sample) in the Northern District of Texas and 11 cases (1.4 percent of our sample) in the Southern District of Florida. Tables II.2 and II.3 below provide further information on the cases we deleted from our sample in each district, as well as other problems that we encountered in our file reviews and how we resolved them.

II Objectives, Scope, and Methodology

Table II.2: Summary of Problems Detected in Reviewing Closed Chapter 7 Bankruptcy Cases in the Northern District of Texas and Their Resolution

Problem detected	Number of cases	Resolution of problem
Case had been reopened; no longer closed.	4	Cases deleted from sample reviewed.
Case involved a codebtor on the homestead with percentage share unknown.	5	Cases deleted from sample reviewed.
IRS debt with amount listed as "unknown."	48 ^{a, c}	Completed DCIs but total debt will be understated by the true value of the IRS debt.
Very complicated chapter 11 to chapter 7 conversion with amounts that could not be reconciled across schedules.	3	Cases deleted from sample reviewed.
Case file contained numerous debts listed on the wrong schedules, as well as three separate mortgage amounts.	1	Case deleted from sample reviewed.
Business chapter 7 case with land listed as homestead, but owner's share of the land could not be determined.	1	Case deleted from sample reviewed.
Schedule G contained an unexpired lease with amount listed as "unknown."	27 ^{a, b}	Completed DCIs but total debt and discharged debt will be understated by the true value of the unexpired lease amounts.
Case was dismissed for failure to complete the forms in a timely manner.	1	Case deleted from sample reviewed.
Case closed as a chapter 13, not chapter 7.	1	Case deleted from sample reviewed.
Case closed in 1994, not 1998.	1	Case deleted from sample reviewed.
Case was a chapter 13 conversion with debt amounts that could not be reconciled across the schedules.	2	Cases deleted from sample reviewed.
Case involved a home builder with several homes listed on the schedules with no indication as to which one was being claimed as the homestead.	1	Case deleted from sample reviewed.
Case dated back to 1986 and the schedules in the file were different from the current schedules used today.	1	Case deleted from sample reviewed.
Case involved surrendered assets whose values could not be determined.	3 ^b	DCIs were completed, but the amount of the discharged debt will be understated by the lower of the market value or debt owed on the assets that were surrendered.
Schedules were missing or were not complete in the bankruptcy file.	3	Cases deleted from sample reviewed.
Case contained debt for child support in an amount that could not be determined.	2 ^c	True value of the total debt will be understated by the amount owed for child support.
The case had been transferred out of the jurisdiction of the Northern District of Texas.	1	Case deleted from sample reviewed.
Case involved debt for a student loan in an amount that could not be determined.	1	True value of the total debt will be understated by the amount owed for the student loan.
Case was converted from a joint chapter 13 to an individual chapter 7 with incomplete data to determine the debt owed.	1	Case deleted from sample reviewed.

^aThere were eight cases in which both IRS debt and Schedule G unexpired lease amounts were listed as "unknown."

^bThere were two cases in which both Schedule G unexpired lease amounts and the value of surrendered assets were listed as "unknown."

^cThere was one case in which debts for both IRS taxes and child support were listed as "unknown."

Source: GAO review of a probability sample of 823 chapter 7 bankruptcy cases closed in 1998 in the Northern District of Texas.

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Table II.3: Summary of Problems Detected in Reviewing Closed Chapter 7 Bankruptcy Cases in the Southern District of Florida and Their Resolution

Problem detected	Number of cases	Resolution of problem
Case contained a proof of claim from IRS for \$25,000, or increments of \$25,000, for unsecured priority debt that seemed to overstate actual taxes that should be owed.	10 ^a	DCIs were completed for these cases and the IRS proof of claim amounts were recorded for Schedule E with the debt owed being nondischargeable.
Case contained no schedules for recording debt owed.	1	Case deleted from sample reviewed.
Case involved no debt that could be discharged either because there was no unsecured debt or the unsecured debt that was recorded was nondischargeable.	5	DCIs were completed, but total debt discharged in these cases was \$0.00.
Schedule G contained an unexpired lease with amount listed as "unknown."	33 ^a	Completed the DCIs but the total debt and total debt discharged will be understated by the true value of the lease amounts owed.
Case had too many debts listed as "unknown" to accurately complete the DCI.	3	Cases deleted from sample reviewed.
Case involved co-debtors on the homestead property and percentage ownership for debt purposes could not be determined.	3	Cases deleted from sample reviewed.
Case involved IRS and/or county taxes owed with no amounts listed.	2	DCIs were completed, but the total debt will be understated by the true value of the taxes owed.
Case was a converted chapter 11 dating back to 1988 and the schedules in the file were different from the schedules used today.	1	Case deleted from sample reviewed.
Case was sent to a records storage center and was not available for review.	1	Case deleted from sample reviewed.
Case was a converted chapter 11 with business and personal debts comingled and we could not determine what debts were personal debts of the debtor.	1	Case deleted from sample reviewed.
Case was a pro se case in which debts from the schedules could not be reconciled.	1	Case deleted from sample reviewed.

^aOne case contained both a seeming overestimate of unsecured priority debt to the IRS as well as an "unknown" amount of debt on an unexpired lease.

Source: GAO review of a probability sample of 785 chapter 7 bankruptcy cases closed in 1998 in the Southern District of Florida.

General Limitations of the Case File Data Used for Analysis

The local bankruptcy courts, the Administrative Office of the U.S. Courts, and the Executive Office of U.S. Trustees—all of whom collect and report varied bankruptcy data—do not maintain specific data on (1) the number of bankruptcy debtors who claim a homestead exemption, (2) the amount of the exemptions claimed, (3) the type and amount of debts owed by bankruptcy debtors, or (4) the type and amount of debts discharged in bankruptcy. The collection of these data is not statutorily required. Therefore, to identify the debtors in our sample in each district who claimed a homestead exemption, we used the data in the bankruptcy court's file for each debtor. These files contained (1) the financial schedules that debtors are required to file with the bankruptcy court; (2) data on case disposition (such as whether the debtor was granted a discharge); (3) information on the debts that debtors reaffirmed (agreed to repay), if the statements of reaffirmation had been filed with the bankruptcy court; (4) the debts for which creditors had filed a proof of claim regarding the amount of money the debtor owed the creditor who filed the proof of claim; and (5) any court orders. Court orders may include court rulings regarding the amount of disputed debts or allowable exemptions.

The debtors' financial schedules contain, among other information, data on whether the debtor claimed a homestead exemption, the amount of the exemption claimed, and the types and total amount of the debts owed.⁵ The data in the debtors' financial schedules currently represent the only detailed data available for estimating the amount of the claimed homestead exemptions; the number, types, and amounts of the debts owed by a bankruptcy debtor; and the total amount of the debts discharged in bankruptcy. However, these data are of unknown accuracy and reliability.⁶ Although the data in each debtor's schedules are reviewed by a private panel trustee, the trustee does not necessarily review the accuracy of every entry in the schedules. The private panel trustee and the bankruptcy court officials we interviewed in each of the two districts stated that they rarely verify the amount that a debtor claims for the homestead exemption and generally accept the reported amount. Nor do they usually review the accuracy of the individual amounts listed for each debt on the debtor's financial schedules.

⁵ Debtors must also, for example, file schedules with information on their income (Schedule I—Current Income of Individual Debtor(s)) and expenses (Schedule J—Current Expenditures of Individual Debtor(s)). These schedules did not include data needed in our analysis.

⁶ In its October 1997 report, the National Bankruptcy Review Commission recommended that debtors' financial schedules be randomly audited.

For the cases we reviewed, we also did not independently verify the accuracy of the claimed homestead exemption or the amount of the debts listed on the schedules. Our analysis was based on the data as presented in the schedules, except where we could use other documents in the case file to reconcile inconsistencies within the schedules or obtain more reliable data on the amounts of specific debts. As noted in the next section, we made adjustments for errors and inconsistencies, where possible, and our analysis incorporated certain assumptions about other data in the schedules that are described in more detail later. Although we endeavored to use the most accurate data available in each file, the results of our analyses are based principally on the data in the debtor's financial schedules and must therefore be viewed as estimates rather than precise and accurate calculations.

Basic Steps Used in the Case File Reviews

We designed a data collection instrument (DCI) to capture information from the case files on (1) whether the debtor(s) owned property for which the debtor(s) claimed a homestead exemption;⁷ (2) the dollar amount of the debtor's equity in the homestead property claimed as exempt, if any; (3) the dollar amount of all personal property listed; (4) the total dollar amount of secured, unsecured priority, and unsecured nonpriority debts listed on the financial schedules; (5) debts the debtor reaffirmed (agreed to repay) and the dollar amount; (6) the apparent nondischargeable debts and the dollar amount;⁸ and (7) the assets surrendered to creditors. For those debtors who claimed a homestead exemption, we used these data to determine the amount of the debtor's homestead exemption and the amount of the debts discharged by the bankruptcy court. We pretested the DCI on a sample of case files from each district and revised the DCI as needed. The remaining description of the methodology used in reviewing the case files reflects the changes we made as a result of the pretest.

In reviewing the case files, we used the data in the case files to answer four basic questions:

- Did the debtor claim a homestead exemption?
- If an exemption was claimed, what was the amount of the claimed exemption?
- If an exemption was claimed, what was the total amount of the debts listed on the debtor's financial schedules?

⁷ Debtors indicate on their bankruptcy petitions whether they are filing as individuals or jointly with a spouse. Married debtors may, if eligible, file as individuals rather than jointly with their spouses.

⁸ As discussed later, some debts that are usually nondischargeable are readily identifiable from the schedules, and other debts that may be nondischargeable are not readily identifiable.

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- If an exemption was claimed, what was the total value of the debts discharged in bankruptcy?

If the debtor did not claim a homestead exemption, we recorded minimal information from the file, such as the docket number, whether the debtor filed individually or jointly with a spouse, and whether the case was originally filed under chapter 7 or another chapter of the bankruptcy code.

Our objective in reviewing the case files was to use the most reliable data available in the files. We used data in the case files to correct errors that could be readily identified in the schedules. For example, mortgage debt could potentially be listed in schedules A,⁹ C,¹⁰ and D,¹¹ and the amounts shown in each schedule could be different. When available in the case files, two documents were generally used to resolve such conflicts and determine the amount of the mortgage or other debt used in our analysis. First, where the debtor had filed a reaffirmation agreement with the bankruptcy court that identified the dollar amount of the mortgage (or other debt) reaffirmed, we used the amount recorded on the reaffirmation agreement. Generally, debtors may, with the consent of the creditor, voluntarily agree to reaffirm—agree to repay—any of their eligible dischargeable debts. Debtors may not reaffirm less than the full amount of the debt without the creditor's consent. Second, where the creditor had filed a proof of claim for the amount of a debt, we used the amount in the proof of claim. Under the bankruptcy code and rules, a properly executed and filed proof of claim is presumptively valid. We found that creditor proofs of claim were principally found in cases that had been converted to chapter 7 from chapter 13 prior to being closed under chapter 7.

If the file contained both a reaffirmation agreement and a proof of claim for the same debt, we used the reaffirmation agreement because this is the amount the debtor had agreed with the creditor to repay. Reaffirmation agreements were most frequently available for mortgage and auto debts. Finally, where there was a court order in the file resolving a dispute about the amount of a debt owed, we used the amount in the court order.

⁹ Schedule A—Real Property.

¹⁰ Schedule C—Property Claimed as Exempt. In Texas, the property on which a homestead exemption is claimed need not necessarily be a dwelling; it may be land that meets the statutory qualifications for a claimed homestead exemption.

¹¹ Schedule D—Creditors Holding Secured Claims. This schedule would appropriately include the market value of and outstanding debt claimed on such property as homes and automobiles.

If a debt was listed on more than two schedules, and one of the amounts was different from the remaining amounts, we used the amount that was listed most frequently. We did this only when no reaffirmation agreement, proof of claim, or court order was available in the file to resolve the conflict shown on the schedules.

We excluded some cases from our analysis because the data on the financial schedules could not be satisfactorily reconciled. In tables II.2 and II.3, we have noted the number of cases in each district's sample that were excluded from our analysis and the reasons for their exclusion.

Determining the Number of Debtors Who Claimed a Homestead Exemption and the Amount of the Exemption Claimed

Bankruptcy debtors claim their homestead exemption on schedule C. In many cases, the amount of the homestead exemption claimed on schedule C was the same as the homestead property's claimed market value on schedule C. This would be true only if there were no outstanding debt on the homestead property. The amount of the homestead exemption claimed is the amount of the debtor's equity in the property—that is, the difference between the claimed market value of the homestead property and the total of all outstanding mortgages and liens secured by that property.¹² Therefore, we did not use the homestead exemption claimed on schedule C in any case in which (1) schedule C showed that the claimed market amount and the claimed homestead amount were identical and (2) schedules A and/or D showed that there was an outstanding mortgage on the homestead property.

Wherever there was a mortgage on the homestead property, we determined the amount of the debtor's equity in his or her homestead property by comparing the claimed market value of the homestead property as shown on schedules A, C, and D, to the total amount of all outstanding mortgages and other identifiable liens on the property as shown on (1) schedules A and D; (2) the debtor's written agreement, if any, to reaffirm the debt on the property claimed as a homestead; and (3) any proofs of claim filed with the bankruptcy court by any creditors holding a mortgage or lien to prove the amount of the outstanding debt owed on the property.

We used all of these sources of data from each case file because interviews with court officials, a private panel trustee, and the results of the pretest of our data collection instrument indicated that debtors' financial schedules

¹² It is possible that the debtor could have both a first mortgage and a home equity loan on the homestead property. It is also possible that there could be a tax lien on the homestead property. Such liens would reduce a debtor's home equity and, thus, the amount of the homestead exemption.

frequently included conflicting data about the market value of and outstanding mortgage owed on their homestead property. For market value, we used the most frequent market value of the homestead property found in the debtor's financial schedules. Where one or more amended schedules had been filed, we used the data on the amended schedule(s). The market value shown in the file is the market value claimed by the debtor and may be more or less than the actual market value of the homestead property. Where neither a reaffirmation agreement nor proof of claim was found in the file, we used the most frequent outstanding mortgage amount(s) recorded on the debtors' financial schedules. Overall, we found schedule D to be the best source of data for determining the debtor's claimed market value for homestead property and the claimed outstanding mortgage amount on that property.

As noted earlier, we excluded some cases from our analyses because the data in the debtors' financial schedules could not be satisfactorily reconciled.

Determining Each Debtor's Total Scheduled Debts

Bankruptcy debtors list their debts primarily on four of the financial schedules they file with the bankruptcy court—secured debts on schedule D, unsecured priority debts on schedule E,¹³ unsecured nonpriority debts on schedule F,¹⁴ and leasehold debts on schedule G.¹⁵ Secured debts are those for which the creditor holds a mortgage or lien on the collateral securing the loan, principally home mortgages and auto loans. For nonbusiness (individual consumer) debtors, unsecured priority debts generally would include such debts as most back taxes and obligations owed for child support and alimony. Unsecured nonpriority debts include credit card debts, medical bills, and other unsecured personal debts.

In our review, we generally used the amount of the debtor's debts as listed on schedules D, E, and F. If the initial schedules had been amended, we used the amounts on the amended schedules rather than the initial schedules. However, as discussed below, we made several adjustments to total debts listed on each of these schedules (including the amended schedules), when appropriate.

¹³ Schedule E—Creditors Holding Unsecured Priority Claims. This schedule would appropriately include such debts as back taxes owed and child support and alimony obligations.

¹⁴ Schedule F—Creditors Holding Unsecured Nonpriority Claims. This schedule would appropriately include credit card debts, unpaid medical expenses, and unsecured personal loans, such as student loans.

¹⁵ Schedule G—Executory Contracts and Unexpired Leases. This schedule would appropriately include such debts as unexpired automobile, truck, and equipment leases.

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In some cases, debtors surrendered to the secured creditor a car or other property on which a debt was owed. If the schedule (usually schedule D) showed that the market value of the property exceeded the debt owed, we assumed the creditor ultimately recovered the full amount of the debt by selling the surrendered property and used the sales proceeds to pay the debt.¹⁶ However, if the schedule showed that the market value of the surrendered property was less than the amount of the debt owed, we assumed that the creditor ultimately incurred a loss at least equal to the difference between the market value of the property (collateral) and the debt owed.¹⁷ Under the bankruptcy code, if the debtor surrenders collateral to a creditor who has a lien on that collateral, and the creditor later recovers less than the full value of the debt owed, the unrecovered amount of the debt is considered to be an unsecured nonpriority debt, and added to the debtor's total unsecured nonpriority debt as listed on schedule F. In our case reviews, we added these debt amounts to the dischargeable debt to determine total debts discharged.

In some cases, debtors noted in either schedule E or F that they owed the Internal Revenue Service (IRS) money for back taxes but listed the amount as "unknown." In such cases, we also recorded the amount as "unknown." Tables II.2 and II.3 provide information on the number of such cases in our sample.

Debtors should list the amount owed under an unexpired automobile, truck, or equipment lease on schedule G. For example, if a debtor had leased a car for 1 year and the remaining payments due under the terms of the lease totaled \$10,000, the debtor should list \$10,000 on schedule G. However, this was not always done. Sometimes the debtor merely listed the monthly payment due under the terms of the lease on schedule G. Where the chapter 7 case file included a reaffirmation agreement or proof of claim, we used the amount in these documents. If the debtor listed the value of the lease in another schedule (B, D, E, or F), we used the amount from that schedule. (Before using the amount from schedule B, D, E, or F, we checked to affirm that the name and address of the creditor listed on schedule G were the same as the creditor listed on the other schedules). If the amount owed under the lease could not be determined from any of these sources, we noted this on the DCI. Tables II.2 and II.3 provide

¹⁶ In actuality, this may or may not be true, because the creditor would incur expenses associated with selling the property. After expenses, the creditor may or may not recover enough to liquidate the full outstanding balance of the debt owed.

¹⁷ Similarly, because of the expenses incurred in selling the recovered property, the actual loss to the creditor may be greater than the amount we assumed to be the amount of the creditor's loss.

information on the number of cases in which the lease amounts owed could not be determined.

Estimating a Debtor's Dischargeable Debts

Under the bankruptcy code, a debtor's debts are grouped into two broad categories—dischargeable and nondischargeable. Consumer (nonbusiness) debtors who file under chapter 7 of the bankruptcy code generally seek a discharge of their eligible dischargeable debts. Basically, a creditor is prohibited from attempting to collect discharged debts from the debtor. However, by statute, some categories of debts expressly cannot be discharged in bankruptcy. These include such debts as most student loans, alimony and child support payments, and most back taxes owed to local, state, or federal governments. The debtor usually remains financially responsible for his or her nondischargeable debts following the bankruptcy court's grant of a general discharge and the closing of the debtor's bankruptcy case.

Currently, the local bankruptcy court, the Administrative Office of the U.S. Courts, and the Executive Office of U.S. Trustees do not gather specific data on the number of debts discharged or the amount of such debts and are not required to do so. The only source of data on discharged debts is the individual bankruptcy court files on each debtor. It was, therefore, necessary to review the debts and categorize them as generally dischargeable or nondischargeable. Because the debtors' financial schedules and the remainder of the debtor's court file rarely included sufficient information to determine precisely which debts were and were not dischargeable, it was necessary to use some basic assumptions in estimating each debtor's discharged debts. First, we deducted from total debts the total amount of all debts for which the debtor had filed a reaffirmation agreement or "statement of intention" to reaffirm with the bankruptcy court. These are debts that the debtor stated it was his or her intention to repay, even though the debts could otherwise be discharged in bankruptcy. Where reaffirmation agreements had not been filed with the bankruptcy court, we relied on the statement of intention, if any, to identify those debts that the debtor had reaffirmed. Because debtors may not ultimately reaffirm any or all of the debts listed on their statement of intention, we may have overstated the amount of debts that the debtor reaffirmed, and thus, understated the amount of debts discharged. Generally, debtors stated their intention to reaffirm their mortgage debt, if any, and one or more vehicle loans.

Second, in estimating each debtor's dischargeable debts, we assumed all debts were dischargeable with the following exceptions, which represent the most frequent types of nondischargeable debts found in the debtors

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schedules: (1) student loans (with the exceptions noted below); (2) taxes owed to state, local, or federal governments that were listed on schedule E;¹⁸ (3) obligations for child support and alimony; (4) criminal fines and restitution and other court judgments; and (5) any additional debts which the case file indicated that the bankruptcy court had determined to be nondischargeable.¹⁹

Student loans that a local, state, or federal government entity or a nonprofit institution grants, insures, guarantees, or subsidizes are usually nondischargeable in bankruptcy. Purely commercial student loans, without government or nonprofit institution insurance, guarantees, or subsidies, are generally dischargeable. However, the debtors' schedules rarely indicated whether a loan was purely commercial. The Higher Education Amendments of 1998 included provisions that changed the bankruptcy status of certain student loans that are more than 7 years old. Prior to the 1998 amendments, otherwise nondischargeable student loans more than 7 years old were generally dischargeable. The 1998 amendments apply to all bankruptcy petitions filed after October 7, 1998, and, in general removed the "more than 7 years" exception for nondischargeability. For bankruptcy petitions filed after October 7, 1998, student loans, regardless of age, are generally nondischargeable. For cases filed on or before October 7, 1998, student loans older than 7 years remain generally dischargeable.²⁰ If there was no indication in the file regarding the age of the student loan, we assumed it was nondischargeable, unless there was documentation in the file to indicate that the debt had been determined to be dischargeable. Where there was information in the case file regarding the age of the student loan, we followed the general standards of the Higher Education Act Amendments of 1998.

In these two districts, in some cases, debtor attorneys listed their uncollected fees owed as unsecured priority debt on schedule E. Most consumer debts listed on schedule E are nondischargeable. The section of

¹⁸ It is important to note that there are circumstances in which some taxes owed are dischargeable. However, it was not possible to determine from the schedules which taxes were appropriately dischargeable. If the debtor's financial schedules are accurately completed, nondischargeable debts would be listed on schedule E, and dischargeable debts would be listed on schedule F.

¹⁹ For example, debts incurred under false pretenses or with the intent to defraud or judicial damage awards based on a finding of willful and malicious injury are also nondischargeable. However, such debts are rarely clearly identified on a debtor's financial schedules. Therefore, we generally limited our categories of nondischargeable debts to the general categories most frequently found in debtors' schedules, such as back taxes, child support, alimony, and some court judgments.

²⁰ The statute governing student loans in bankruptcy filings on or before October 7, 1998, actually ties dischargeability to the date on which the loan first became due.

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the bankruptcy code that lists the types of debts that are nondischargeable does not specifically list attorneys fees as nondischargeable.²¹ Claims for scheduled unsecured debtor attorneys fees are potentially subject to discharge like most other unsecured debt, unless a court finds a valid claim for having the debt excepted from discharge. Therefore, in the absence of any document in the file indicating that the court had ruled the debtor's unpaid attorney fees to be nondischargeable or that the debtor had reaffirmed the attorneys fees, we classified unpaid debtor attorney fees listed on schedules E or F as dischargeable. It is possible that using this assumption, we overstated the amount of attorneys fees that were discharged.

Our work was performed from February through May 1999 in accordance with generally accepted government auditing standards.

²¹ The bankruptcy code does except from discharge fees for professional services that the debtor obtained by fraud, false pretenses, or misrepresentation.

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